D.B. Civil Special Appeal No.167/2003.
(Devshanker Vs. Hemant & Others)

DATE OF JUDGMENT : October 04, 2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. Suresh Kumbhat for the appellant.
Mr. Jagdish Vyasfor the respondent No.3.

The instant civil special appeal arises out of the judgment of the learned Single Judge dated 21.07.2003 passed in S.B. Civil Misc. Appeal No.703/2001. Before the learned Single Judge, appellant Devshankar challenged the order dated 23.03.1996 passed by the Motor Accident Claims Tribunal, Dungarpur (hereinafter, 'the Tribunal') and prayed that the order dated 23.03.1996 may be set aside and the case may be remanded to the Tribunal with a direction to decide it on merit after giving opportunity to the appellant.

Before the Tribunal, alongwith others, appellant Devshankar pressed motor accident claim for the compensation for having been injured in the accident which occurred in the evening on 02.10.1990. It was alleged that the appellant, alongwith others, was travelling in Mini Bus No.GQE 2295. Claimants of the said accident alleged that the driver of the bus in which they were traveling was driving the bus rashly

and negligently at a high speed and he lost control of the bus as a result of which the bus turned turtle. The appellant suffered injuries in the accident. At the trial, issues were framed for adjudication of the claims. On the determination of the issues, material facts were decided against the respondent-non-claimants as a sequel to which the claimants became entitled to receive compensation. However, the claim petitions of certain claimants, including the present appellant, were rejected by the Tribunal on the ground that they led no evidence at the trial.

Before the learned Single Judge, the appellant pleaded that the appellant is resident of Mumbai – far off from Dungarpur in Rajasthan and was unable to attend the Tribunal frequently and the counsel representing the claimant before the Tribunal did not inform him about the progress of the case and as such they were not aware of the date on which they were required to appear before the Tribunal for evidence. In the impugned judgment, the learned Single Judge reached conclusion that the theory propounded by the appellant cannot be believed and, therefore, the learned Single Judge dismissed the appeal summarily.

Before us, it is contended by learned counsel for the appellant that it is not in dispute that the appellant is residing in Bombay and there is no evidence on record to show that his counsel informed him to remain present before the Tribunal at Dungarpur for evidence. It is further contended that the

learned Single Judge has not appreciated the record as well as submissions of the appellant in proper perspective and reached conclusion on subjective hypothesis without considering the other material aspects of the case. It is contended that at the trial the material issues on which the appellant's claim to compensation was based were decided against the non-claimant respondents and thus it could not be judicially concluded that the appellant would not be entitled to receive compensation. It is urged by learned counsel for the appellant that the learned Single Judge has erred in law in not appreciating that substantial justice must not be defeated for observance of technicalities. It is contended that the learned Single Judge has simply hypothesized by assuming that the counsel must have informed all the claimants and only conclusion, deducible from this sequence of circumstances of the case is, that it was the claimant who, either did not pay any heed to the communication of the counsel, or did not find time to appear on the date, or may be, that looking to the injuries sustained, within their hearts of hearts, did not feel it worthwhile to travel, all the way to Doongarpur from their residence and is now only trying to pass on the blame on the counsel.

Appearing for the respondent New India Assurance Company Ltd., Mr. Jagdish Vyas contended that negligent claimants cannot be held entitled to any compensation. He argued that the appellant did not at

all care to lead evidence in support of his claim and thus the learned Tribunal did not commit any error in holding that the injured claimant has not led any evidence and is thus not entitled to any compensation. It is urged by learned counsel for the respondent No.3 that the learned Single Judge has elaborately dealt with the submission of the appellant and recorded reasons for dismissing the appeal and, therefore, it cannot be said that there is any error or illegality in the impugned judgment warranting interference.

We have considered the rival submissions and carefully gone through the impugned judgment. We have also carefully considered the judgment dated 23.03.1996 passed by the Tribunal.

It cannot be lost sight of that the Tribunal has decided material issues against the non-claimant respondents and, while rejecting claim petitions of inter alia the appellant before us, held the injured/L.Rs. of deceased travelers entitled to receive compensation. The only reason assigned for dismissing the claim of the appellant is on the assumption that the appellant may have been informed by counsel and, despite such communication, the claimants on their part did not lead any evidence because of assumed smallness of injuries. We do not find any warrant for such presumption. It is conspicuous fact that the appellant is throughout contesting his claim. After the Tribunal, the appellant contested before the learned Single Judge

and now before us. Thus, we are inclined to feel that it would not be just and proper to say that appellant did not care to lead evidence and willy-nillied with his claim.

In the interest of justice, we allow the prayer of the appellant to remand the case to the Tribunal with further direction to decide the same on merit after giving one opportunity to the appellant to produce evidence and decide the matter within three months from the date of receipt of certified copy of this order. We order accordingly.

As a sequel to the aforesaid direction, we set aside the judgment of the learned Single Judge and also the order passed by the Tribunal qua the appellant. There shall, however, be no order as to costs.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.